

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 162, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company violated the controlling agreement when they unjustly dismissed Carman B. S. Fisher from service effective January 6, 1975.
2. That accordingly, the Southern Pacific Transportation Company be ordered to reinstate Carman B. S. Fisher to service with all seniority rights, Health and Welfare benefits for himself and his dependents, including all other rights, and compensate him for all time lost retroactive to January 6, 1975, until he is restored to service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was dismissed from the service of the Carrier for absenteeism and failure to devote himself exclusively to his duties. This claim has been processed on the grounds that the Carrier has failed to meet its burden of proof. In its submission to this Board, the organization alleged that the charge was not a precise charge as called for in rule 34 of the controlling agreements.

The question of whether the charge was precise was raised for the first time in the submission to this Board of the Organization. The failure of the claimant to raise this issue on the property bars same from consideration by this Board.

There is no dispute between the parties as to the fact that the claimant was absent 31 days from July 16, 1974 through December 13, 1974. These absences by the claimant are not in and of themselves grounds for dismissal. The absences complained of must have been without cause or without compliance by the claimant with the rule of the Carrier pertaining to absences, to wit: Rule 19.

"Absence Account Sickness

In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible.

Where regular assigned employees are laying off or absent from duty and their position is being filled during their absence such employee must notify their foreman not later than sixteen (16) hours prior to their starting time and they will report for duty in order to qualify for work on the date reporting."

The transcript of the investigation proceedings reveals that during the period of the absences the claimant periodically called his foreman and either to him directly or by leaving a message, reported that he would be absent. On one occasion the claimant was informed that he would have to present a release from his doctor before he could return to work. This the claimant did in mid-October. There is nothing in the record that effectively contradicts the claimant's position that his absences were either for illness or good cause.

Further, we are unable to find in the transcript where the carrier has produced evidence to substantiate a dismissal for failure to devote oneself exclusively to his duties. The testimony offered against the claimant at the investigation consisted of general statements which lacked the necessary specificity on which a finding could be made that the claimant failed to devote himself exclusively to his duties.

There is no question but that when an employee is absent as much as claimant a red flag is raised. Once that flag is raised, however, it is incumbent upon the carrier to proceed to develop the facts necessary to demonstrate that discipline is warranted. The Carrier built no record during the July 16 through December 13 period to support its finding. The vague testimony concerning the production of claimant will not suffice.

We will sustain the claim with the provision that claimant's outside earnings be deducted from the award and the Carrier suffer no damages for the six month extension carrier granted the organization during the handling of this case.

Form 1
Page 3

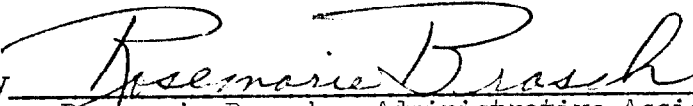
Award No. 7522
Docket No. 7399
2-SPT-CM-'78

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of April, 1978.